

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8341 of 1988

with

SPECIAL CIVIL APPLICATION NO 8344 OF 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

MASTER SILK MILLS PVT. LTD.

Versus

NAGAJI DHANJI

Appearance:

MR KS NANAVATI for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 24/09/1999

ORAL JUDGEMENT

Learned advocate Mr. Vimal Patel appears for Mr. K.S.Nanavaty, advocate for the petitioner Co. In this petition, this Court has issued rule on 16th December, 1988. While issuing rule, this Court granted interim

stay against the order passed by the labour court, Rajkot on 29th November, 1986. The rule has been served upon the respondents but none has appeared for the respondents.

2. In the present petition, the orders passed by the Labour Court Rajkot in Recovery Application No. 1168 of 1980 and 1218 of 1980 has been challenged. Said recovery applications were filed by the applicants workmen under section 33(C)(2) of the Industrial Disputes Act, 1947 ("the ID Act" for short). It was the case of the applicants before the labour court that the applicants were working in the opponent mills CO. and on 5th October, 1976, the settlement was arrived at between the Textile Labour Association which was the representative union for the Silk Industry in Bhavnagar local area. Subsequently, another settlement was arrived at between the Master Silk Mills Kamdar Mandal which was the representative union and the opponent Mills Co. According to the said settlement, if any workman tenders his resignation through the union, said workman was to be paid the retrenchment compensation and gratuity and the union should agree to allow the opponent Mill Co. to allot to the workman 4 looms. According to the applicants, the applicants tendered their resignation and, therefore, they are entitled to the retrenchment compensation and gratuity but the opponent mill Co. has not paid the same and, therefore, the applicants had filed the recovery application claiming the amounts of gratuity and retrenchment compensation. Before the labour Court, the opponent Mill Co. filed the written statement and raised the contention that the labour Court has no jurisdiction to hear and decide the said application. Even on merits, it is denied that the applicants worked for a period as alleged and further contended that the opponent has not allotted the work to the workman of four looms and that the applicants are not entitled to the retrenchment compensation and gratuity. During the pendency of the said recovery applications, the parties have not led any oral evidence and the matters were adjourned from time to time to enabling the parties to arrive at some settlement but the settlement was not possible and the labour Court, Rajkot has, ultimately, passed the order below Exh. 9 after hearing both the sides and determined the amounts due to the respective workmen. Said order of the labour Court was challenged by the opponent Mills Co. before this Court by filing writ petition and this Court had remanded the matter back to the labour Court with a direction to hear the parties on the basis of the documents already on record. Said matters were, thus, remanded on the

representation of the representative of the applicants with a direction to pass reasoned and speaking orders after hearing the parties.

Before the labour Court, a specific contention was raised by the petitioner Mill Co. that the applicants Popat Bhikha, Nagji Dhanji and Pranjivan Chhaganlal have withdrawn recovery applications No. 1218 of 1980, 1168 of 1980 and 1170 of 1980 respectively but the labour Court has not believed the said contention of the Mill Co. on the ground that the record does not show that these applicants have withdrawn the recovery applications. Therefore, ultimately, the labour Court, by order dated 29th November, 1986, granted the amount of Rs.5707.00 to Nagji Dhanji, applicant in Recovery Application No. 1168 of 1980 and Rs. 3976.00 to Popat Bhikha, applicant in Recovery Application No. 1218 of 1980.

At the time of hearing, Mr. Vimal Patel learned advocate for the petitioner has pointed out and produced the xerox copy of the document which would reflect that the applicant in recovery application No. 1168 of 1980 had tendered the resignation on 9th April, 1983 and also received the amount of gratuity, ex-gratia amount of bonus from the petitioner Mill Co. and also clarified that now no dues remained pending of the respondent with the petitioner Mill Co. In the said purshis, it was specifically mentioned by the respondent that in view of the amount having been received by the respondent workman, the respondent is withdrawing the recovery application No. 1168 of 1980. The labour court has not considered and appreciated the contention which the petitioner has raised before the labour court that the said recovery application has already been withdrawn by the said workman and the legitimate dues were already paid to the said workman. Therefore, it was contended by the learned advocate for the petitioner that in so far as the applicants of the recovery application no. 1168 of 1980 and 1218 of 1980 are concerned, the impugned order of the labour Court is not legal and valid and required to be quashed and set aside.

I have considered the submissions made by the learned advocate for the petitioner and have also perused the record as also the xerox copy of withdrawal purshis filed by the respondents workmen dated 10th April, 1983 wherein it was specifically admitted by the respondents that they have received the amounts of gratuity, exgratia payment of bonus and now no amounts were due against the petitioner Company. In view of this, there was no

dispute remaining with the petitioner Mill Co.

In view of the records, the directions which have been issued by the labour Court in aforesaid recovery applications are required to be quashed and set aside. Once the respondents, by specific purshis produced before the labour Court contended that they have received their dues from the petitioner Co. and when such contention in that respect was raised by the petitioner before the labour court, the labour court ought to have appreciated the same and ought not to have issued the directions which the labour court has issued in the aforesaid recovery applications. Thus, the orders of the labour court are contrary to the facts on record. The labour court ought to have asked and ascertained from the representative of the respondents in respect of the contention raised by the petitioner Co. as to whether, in fact, the respondents concerned have received the amounts as alleged by the petitioner and whether they are withdrawing the said recovery applications or not. But, without verifying and going into that aspect and without inquiring any detail, the labour court passed order of recovery against the petitioner and therefore, the labour court has committed gross error in law and facts which is apparent on the face of the record. The impugned orders are, therefore, liable to be quashed and set aside.

Both these petitions are allowed. The orders of recovery passed in Recovery Application NO. 1168 of 1980 and 1218 of 1980 by the labour Court are hereby quashed and set aside. Rule is made absolute in both the petitions with no order as to costs.

24.9.1999. (H.K.Rathod,J.)

Vyas